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Please Reply to Parsippany

November 20, 2008

National Institute of Standards and Technology
Catherine S. Fletcher
FOIA and Privacy Act Officer
100 Bureau Drive, STOP 1710
Gaithersburg, MD 20899-1710

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MANAGEMENT & ORGANIZATION
DIVISION

Re: FOIA Request for Materials Relating to 7WTC
Our File No. : 02-5514:241.0001-A

FOIA Request
#09-15

Dear Ms. Fletcher:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552, with reference to 15 U.S.C. 7306.

In order to help you determine our status to assess fees, you should know that we are counsel to Consolidated Edison Company of New York and certain of its insurers with respect to certain litigation pending in the United States District Court for the Southern District of New York concerning the collapse of World Trade Center Building 7 ("WTC7"). The information we seek is critical to determine in that suit the very questions which NIST considered in its reports, including NIST NCSTAR 1-9 and NIST NCSTAR 1A, namely the cause of the collapse of WTC7 on September 11, 2001.

I request that a copy of the following documents be provided to us:

1. All documentation, statements, reports of interviews, and names of interviewees concerning the information on Table 3-1 of NIST NCSTAR 1-9 on Page 48 concerning the layout and contents of WTC7 below the 15th floor.

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2. With respect to all floors of WTC7, all Fieldwork Drawings, which bear the designation FW on the drawings.
3. With respect to trusses 1 and 2 located on the 5th through 7th floors of WTC7:
 - A. All Drawings depicting Double Angle and Plate Sizes at Top Cord Connection.
 - B. Diagonal Connection Detail and Field Welding at 6th Floor.
4. With respect to the 8th to 43rd floors of WTC7:
 - A. All Frankel Steel Shop Drawings numbered from 2001 to 2999.
 - B. All drawings of the following structural elements of the building, whether contained in the Frankel Steel Shop Drawings Numbered from 2001 to 2999 or not:
 1. W33X130 between Column 44-79.
 2. W27X94 between Column 79-80.
 3. W24X62 between Column 80-81.
 4. W27X84 between Column 81-26.
 5. W36X135 between Column 76-79.
 6. W27X94 between Column 77-80.
 7. W27X84 between Column 78-81.
 8. 40'' Built-Up Girder between Column 73-76.
 9. W27X84 between Column 74-77.

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10. 40'' Built-Up Girder between Column 75-78.
11. W24X76 between Column 70-73
12. W21X57 between Column 71-74.
13. W24X62 between Column 72-75.
14. W24X76 between Column 67-70.
15. W21X57 between Column 68-71 (MG-141 at 14th FL. Only).
16. W24X62 between Column 69-72 (MG-142 at 14th FL. Only).
17. W24X76 between Column 64-67.
18. W21X57 between Column 65-68 (MG-141 at 14th FL. Only).
19. W21X68 between Column 66-69 (MG-142 at 14th FL. Only, W18X71 at 17th FL. Only).
20. W21X150 between Column 61-64.
21. W18X40 between Column 62-65.
22. W18X40 between Column 63-66.
23. W24X55 between Column 58-61.
24. W21X44 between Column 59-62.
25. W21X50 between Column 60-63.
26. W30X116 between Column 55-58.
27. W21X44 between Column 58-59.

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- 28. W16X31 between Column 59-60.
 - 29. W24X62 between Column 60-South Face (W16X77 at 8th and 28th Floor only).
 - 30. W24X76 between Column 56- Girder W30X99.
 - 31. W30X99 between Column 5- Girder W30X116.
 - 32. All Wind Girders.
 - 33. All W5X19 in Core Openings.
5. With respect to the Penthouse of WTC7:
- A. Framing Plan.
 - B. Member and Connection Shop Drawings.
6. All Photos, Videos, still or moving images, or the like, depicting WTC7 or its remains.

Thank you in advance for your cooperation.

Very truly yours,

GENNET, KALLMANN, ANTIN & ROBINSON, P.C.

By: 

MICHAEL S. LEAVY

cc: Franklin M. Sachs, Esq., Co-Counsel for Consolidated Edison

National Institute of Standards and Technology
Catherine S. Fletcher, FOIA & Privacy Act Officer
100 Bureau Drive, STOP 1710
Gaithersburg, MD 20899-1710

RE: Freedom of Information Act Request

Dear Sir or Madam,

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, (referred to herein as the "Request") for certain records believed to be in the possession of the National Institute of Standards and Technology (NIST).

In its draft report on the collapses of the World Trade Center buildings, NIST asserted that it reviewed 6,977 segments of video footage, totaling in excess of 300 hours, and 6,899 photographs. (NIST Draft Report of NCSTAR 1, p. 81, available online at <http://wtc.nist.gov/pubs/NISTNCSTAR1Draft.pdf>) In its final report, NCSTAR 1-6, NIST asserted that it reviewed nearly 150 hours of video footage and over 7,000 photographs for insights into the structural response of the Twin Towers. (NCSTAR 1-6, p. liii)

Also in its draft report, NIST represents that all of the visual materials that served as the basis for the report were placed into a searchable database in which each frame was characterized by a set of attributes. (NIST Draft Report of NCSTAR 1, p. 81, available online at <http://wtc.nist.gov/pubs/NISTNCSTAR1Draft.pdf>) Therefore, the undersigned suggest that NIST use this database to efficiently respond to this Request.

NIST also represents in its draft report that emphasis was placed on obtaining the visual material "in a form as close as possible to the original in order to maintain as much spatial and timing information as possible." (*Id.*) In particular, NIST says it obtained "direct digital copies of digital photographs and videos, high resolution digitized copies of film or slide photographs, and direct copies from the original source of analog video." (*Id.*)

The Requesters hereby request all of the photographs and videos collected, reviewed, cited, or in any other way used by NIST during its investigation of the World Trade Center building collapses. A subset of the records requested herein comprises all 6,977 segments of video footage (whether 150 hours, 300 hours, or more), all 6,899 photographs, all of the more than 7,000 photographs, and all of the visual materials contained in the searchable database referred to in the various NIST reports and referenced and described above.

It is believed that these records are in the possession, custody or control of NIST, its current or former employees and other personnel, or the contractors, scientists and other entities or personnel that contributed to or participated in the NIST investigation.

This is not intended to limit the scope of the search for records responsive to this Request, but is merely intended as a suggestion as to where such records may be found.

These records should be easily located in the searchable database NIST asserts it has, although this Request also applies to any and all visual materials, regardless of whether they are currently or ever have been located in the searchable database. This Request also applies to visual materials that were collected, reviewed, cited or in any other way used by any person or entity that aided, assisted, contributed to, participated in, or was in any other way involved in the NIST investigation of the WTC building collapses. The term visual materials, as used herein, means photographs, videos, still frames from videos, and any similar such materials.

The Requesters request that all responsive records be produced in the highest quality electronic format possible. Digital pictures and videos should be produced in their native format whenever possible, with all metadata included. Digital versions of physical visual materials should be produced in the absolute highest quality digital format in which they are available. If analog video was converted to a digital format, it should be produced in the highest quality digital format in which it is available.

If it will facilitate responsiveness to this Request, the Requesters agree to provide one or more new, in the box, external hard disk drives to NIST. NIST personnel can then transfer all of the responsive records in electronic format to the external hard disk drives. NIST can provide the Requesters with information regarding how much storage space will be needed, and the Requesters will promptly purchase the needed storage media in accordance with the specifications provided by NIST and ship it directly to the NIST FOIA officer assigned to this Request. The undersigned agrees to pay reasonable duplication fees (in addition to the cost of necessary storage media and shipping costs) associated with the records provided in response to this Request, not to exceed \$500. The undersigned also kindly request that NIST provide the Requesters with an itemized estimate of the fees associated with said records if they are determined to exceed \$500. Given the fact that most or all of the responsive records are already contained on a single, searchable database, the Requesters seriously doubt the duplication fees should exceed \$500.

Notwithstanding any of the foregoing, the Requesters hereby request a fee waiver and/or reduction under 5 USC §552(a)(4)(A)(iii), because the responsive records are likely to contribute significantly to public understanding of the operations of activities of government, and they are not in the commercial interest of the Requesters. Specifically, the records will reveal whether NIST has adequately investigated and explained the worst attack on the United States since Pearl Harbor. Also, the records do not serve any commercial interests because, as described in more detail below, the Requesters are an individual and a not-for-profit entity that are engaged in scientific research and publishing papers regarding the WTC collapses. If a fee waiver is granted under this section, the Requesters still agree to provide any and all storage media needed for the released records at the cost of the Requesters.

The Requesters also hereby request that any fees that are charged be limited to only duplication charges under 5 USC §552(a)(4)(A)(ii)(II), because the records are not sought for commercial use, and because this Request is being made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. In particular, the first Requester, James Gourley, has an undergraduate degree in chemical engineering, and is an attorney. He has authored or co-authored several papers regarding the WTC building collapses that have been published in mainstream, peer reviewed scientific journals. He is also the Director of the second requester, the International Center for 9/11 Studies (the Center).

Information about the Center can be found at its website: www.ic911studies.org. Mr. Gourley, as Director of the Center, has authored or co-authored the following papers:

Gourley, James. "Discussion of 'Mechanics of Progressive Collapse: Learning from World Trade Center and Building Demolitions' by Zdenek P. Bazant and Mathieu Verdure." *Journal of Engineering Mechanics*. Vol. 133, No. 3, pp. 308-319. (DOI: 10.1061(ASCE)0733-9399(2007)133:3(308)) (available online at <http://www.civil.northwestern.edu/people/bazant/PDFs/Papers/D25%20WTC%20Discussions%20Replies.pdf>)

Ryan, K., Gourley, J., Jones, S. "Environmental Anomalies at the World Trade Center: evidence for energetic materials." *The Environmentalist*. August 2008. (DOI: 10.1007/s10669-008-9182-4) (available online at <http://www.springerlink.com/content/f67q6272583h86n4/>)

Jones, S., Legge, F., Ryan, K., Szamboti, A., Gourley, J. Fourteen Points of Agreement with Government Reports on the Destruction of the World Trade Center. *The Open Civil Engineering Journal*. Vol. 2, pp. 35-40. (DOI: 10.2174/1874149500802010035) (available online at <http://www.bentham-open.org/pages/content.php?TOCIEJ/2008/00000002/00000001/35TOCIEJ.SGM>)

The Center also led an effort in collaboration with the groups Architects and Engineers for 9/11 Truth (www.ae911truth.org), Scholars for 9/11 Truth and Justice (www.stj911.org), and other scientists and engineers to submit 26 pages of public comments on the draft report NIST released regarding the collapse of WTC Building 7. (Available online at <http://wtc.nist.gov/comments08/jamesGourleywtc7comments.pdf>) This was an enormous undertaking given the unreasonable three week deadline for submission of comments on the 1000+ page report. The Center's comments were successful in that they prompted NIST to make a number of revisions to the draft report before releasing it in final form.

Clearly the Center and Mr. Gourley qualify as educational or noncommercial scientific institutions under 15 C.F.R. 4.11(b)(5) and, as such, are entitled to a fee

structure that is limited to duplication costs only. Again, the Center or Mr. Gourley will provide any data storage media needed to fulfill this Request.

It has also come to the attention of the Requesters that NIST might attempt to withhold the requested records based on copyright considerations. Specifically, NIST might try to withhold the records based on the assertion that the rights holders for the records do not consent to them being released. This position is utterly and completely without merit. First, there is no exemption under 5 USC § 552(b) for copyrighted documents. This alone should settle the issue. The only exemption that could even arguably be asserted is exemption 4, “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 USC § 552(b)(4). However, the Copyright Act protects only the form of expression, but not the information or ideas contained in the expression. *See Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 348-49 (1991) (compilation of facts, if sufficiently original, is entitled to copyright protection although the facts contained therein are not); *Attia v. Soc’y of New York Hosp.*, 201 F.3d 50, 54 (2d Cir. 1999) (“A copyright thus protects not the author’s ideas, but only her expression of them.”) Exemption 4 only applies to “information” obtained from a person, namely information that constitutes a trade secret or commercial or financial information. Because copyright does not protect the information contained in works of authorship, agency records can never be withheld under Exemption 4 based on copyright. Furthermore, pictures and videos of the events of September 11, 2001 obviously do not contain commercial information, financial information, or trade secrets of the individuals that provided them to NIST.

Second, the United States Court of Appeals for the District of Columbia has specifically held that third party photographs are agency records and subject to FOIA. *See Weisberg v. United States Dep’t of Justice*, 631 F.2d 824, 828 (D.C. Cir. 1980); *see also General Elec. Co. v. NRC*, 750 F.2d 1394, 1400-01 (7th Cir. 1984) (internal company report submitted in connection with licensing proceedings held to be “agency record” and subject to FOIA). The Freedom of Information Act and the *Weisberg* case pre-date the NIST investigation, and the photographers and videographers who provided their material to NIST did so subject to the then-existing legal framework. Therefore, the rights holders cannot complain about NIST complying with existing laws and releasing the records under a legitimate FOIA request. It is **not** the job of NIST to help copyright holders enforce their rights. It is instead the job of NIST to comply with existing FOIA laws and release all records that are not legitimately subject to one of the exemptions enumerated in the FOIA statute.

If the rights holders want to try and enforce any copyrights against the Requesters herein, they can attempt to do so, but they will lose. Any use by the Requesters of the records sought will certainly and obviously fall within the “fair use” exception to the Copyright Act, because the Requesters have absolutely no commercial interest in them at all. They will be used solely for scientific research purposes. Again, it is incumbent on the rights holders, not NIST, to police their rights if they think their rights have been violated. By providing documents to NIST for use in a federal investigation, the rights holders impliedly consented to their documents being copied and released under FOIA.

Finally, the Requesters refer NIST to a recent memo President Obama sent to the heads of all executive departments and agencies. (Available online here: http://s3.amazonaws.com/propublica/assets/docs/2009foia%20mem%20rel%20_2_.pdf) It states as follows:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government.

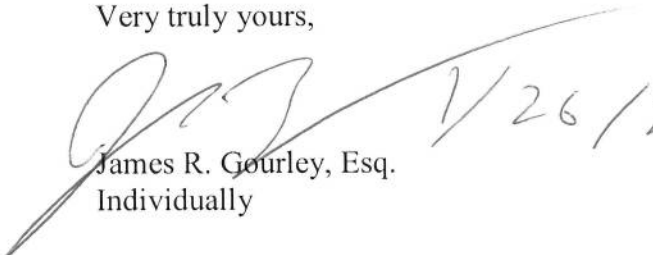
The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

This is certainly one policy change that the Requesters can wholeheartedly endorse. NIST should heed President Obama's new openness policy and release these records so they can become a welcome and much needed addition to the publicly available body of evidence regarding the attacks of September 11, 2001.

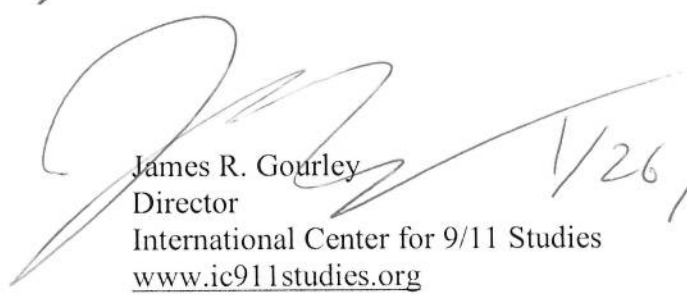
The undersigned Requesters submit this request jointly and severally. The Requesters reserve the right to pursue all administrative and judicial remedies available to them together or individually, in the Requesters' sole discretion.

Thank you very much for your time and consideration. Please do not hesitate to contact me directly if you have any questions or concerns regarding this Request.

Very truly yours,



1/26/2009
James R. Gourley, Esq.
Individually



1/26/2009
James R. Gourley
Director
International Center for 9/11 Studies
www.ic911studies.org

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February 27, 2009

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Catherine S. Fletcher
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Gaithersburg, MD 20899-1710

FOIA Request #A63

 **COPY**

Re: FOIA Request for Materials Relating to 7WTC
Our File No: 02-5514:241.0001-A

Dear Ms. Fletcher:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552, with reference to 15 U.S.C. 7306.

In order to help you determine our status to assess fees, you should know that we are counsel to Consolidated Edison Company of New York and certain of its insurers with respect to certain litigation pending in the United States District Court for the Southern District of New York concerning the collapse of World Trade Center Building 7 ("WTC7").

I request that a copy of the following documents be provided to us:

1. Controlled Inspection Reports Concerning:
 - a. High strength bolt testing and inspection reports (High Priority)
 - b. Welding testing and inspection reports (High Priority)

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February 26, 2009

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FOIA and Privacy Act Officer

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2. All Fire Resistance Test Reports
3. All Firestopping Inspection Reports.
4. All construction photographs prior to September 11, 2001.
5. Analysis Input:
 - a. All temperature time histories applied to ANSYS 16-story model
 - b. All computer input files for ANSYS 16-story model
 - c. All modeling assumptions regarding fire damage heat transfer to slab and/or slab response to heating stress used in LS-DYNA model in areas where fire was present, including but not limited to stiffness and other reduction factors.
 - d. All connection characteristics for both the ANSYS and LS-DYNA models in the form of nonlinear force-deformation relationships (with temperature dependence) for each action in a connection (shear, axial tension, axial compression, etc) together with supporting calculations for the following connections:
 - i. All floor system connection types listed in Section 2.4.3 of NIST NCSTAR 1-9
 - ii. All Shear studs
 - iii. All Column splices
 - iv. All Connections in the transfer trusses
 - v. All connections in the transfer girders on the north side of the building

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February 26, 2009

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vi. All connections for Floor 12 east of and including Columns 76, 77 and 78 (and generally consistent with NIST NCSTAR 1-9 Figure 11-10)

6. All photographs and videos depicting 7WTC on 9/11

Thank you in advance for your cooperation.

Very truly yours,

GENNET, KALLMANN, ANTIN & ROBINSON, P.C.

By: 

MARK L. ANTIN

cc: Franklin M. Sachs, Esq., Co-Counsel for Consolidated Edison

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Please Reply to Parsippany

April 21, 2009

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APR 27 2009



COPY

MANAGEMENT & ORGANIZATION
DIVISION

Re: FOIA Request for Materials Relating to 7WTC
Our File No. : 02-5514:241.0001-A

FOIA Request
#09-88

Dear Ms. Fletcher:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552, with reference to 15 U.S.C. 7306.

In order to help you determine our status to assess fees, you should know that we are counsel to Consolidated Edison Company of New York and certain of its insurers with respect to certain litigation pending in the United States District Court for the Southern District of New York concerning the collapse of World Trade Center Building 7 ("WTC7"). The information we seek is critical to determine in that suit the very questions which NIST considered in its reports, including NIST NCSTAR 1-9 and NIST NCSTAR 1A, namely the cause of the collapse of WTC7 on September 11, 2001.

We also ask that you expedite our request on the ground that a substantial due process right will be lost, as set forth in 15 C.F.R. § 4.6(e)(1). If our request is not fulfilled promptly, Con Edison and its insurers will be severely prejudiced in litigation concerning the collapse of WTC7 pending before Alvin K. Hellerstein in the U.S. District Court for the Southern District of New York. In particular, there is a fact discovery cutoff date of June 30, 2009 in that litigation, and the documents necessary from NIST must be produced within 20 days or our clients will be unable to further investigate the case and use the information developed from the information we seek from

April 21, 2009

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NIST at the trial of this action. Given the importance of that information to pending litigation NIST is required to process this request on an expedite basis. *Cleaver v. Kelley*, 427 F.Supp. 80 (D.C.D.C. 1976). *See, also, Open Am. v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976),

I request that a copy of the following documents be provided to us:

1. Transcripts of all interviews conducted with WTC7 tenants;
2. Transcripts of all interviews with fire, police, and other emergency responders;
3. Floor plans, partition plans and interior design layouts for American Express, US Secret Service, US Securities and Exchange Commission, and the Hartford Insurance Company
4. All FOIA requests made by any other persons concerning 7WTC.
5. Native source files for all images in Chapter 5 of NIST's final report concerning WTC 7.
6. All of the "various records and documents generated by the various agencies during operations at the WTC and records and documents generated following the incident" referenced in the NIST final report on WTC7.
7. All "investigative reports such as the McKinsey and Company reports for FDNY and NYPD", including but not limited to "Increasing FDNY's Preparedness" of August 2002, referenced in the NIST final report on WTC7.
8. The following interviews as referenced in the NIST report:
 - A. SSB Interview 1, January 2004.
 - B. WTC 7 Interview 1110402, fall 2002.
 - C. WTC 7 Interview 2110402, fall 2002.
 - D. FDNY Interview 45, winter 2004.
 - E. FDNY Interview 23, winter 2004.
 - F. FDNY Interview 3, winter 2004.
 - G. PAPD Interview 1, fall 2003.

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- H. FDNY Interview 19, winter 2004.
- I. WTC 7 Interview 2041604.
- J. WTC 7 Interview 1041704, spring 2004.
- K. SSB Interview 5, April, 2004.
- L. FDNY Interview 73, summer 2004.
- M. FDNY Interview 69, spring 2004.
- N. OEM Interview 4, April 2004.
- O. OEM Interview 16, July 2004.
- P. FDNY Interview 14, winter 2004.
- Q. FDNY Interview 26, winter 2004.
- R. FDNY Interview 29, winter 2004.
- S. WTC 7 FDNY Interview 70, April 2004.
- T. FDNY Interview 30, winter 2004.
- U. FDNY Interview 31, winter 2004.
- V. FDNY Interview 34, winter 2004.

Thank you in advance for your cooperation.

Very truly yours,

GENNET, KALLMANN, ANTIN & ROBINSON, P.C.

By:

MICHAEL S. LEAVY

cc: Franklin M. Sachs, Esq., Co-Counsel for Consolidated Edison
Martin Heslin, Esq.